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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,223	11/17/2003	Kellie Ross	57038	4443

7590 01/21/2005
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EXAMINER

WUJCIAK, ALFRED J

ART UNIT PAPER NUMBER

3632

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/715,223	Applicant(s) ROSS ET AL.	
Examiner Alfred Joseph Wujciak III	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 November 2004.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 and 13-16 is/are rejected.
- 7) Claim(s) 10-12 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 November 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/5/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

This is the final Office Action for the serial number 10/715,223 INTRAVENOUS LINE HOLDER, filed on 11/17/03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "said indicia" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 3,286,713 to Kurtz et al. in view of US Patent # 4,606,735 to Wilder et al.

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Kurtz et al. teaches a holder comprising a thin, flat sheet of material having a first substantially flat surface portion and a marginal edge portion (4) with outer end edge (located on each ends of element 4), an opening (5) formed through the marginal edge portion in spaced relation to an adjacent outer end edge. The first portion comprises a central portion (7). The holder comprises a normally closed slit (6) extending from each opening through an adjacent outer end edge of the marginal edge portion. The holder being made of a material (col. 1, line 52-54) having sufficient flexibility to enable a length of line to be pressed through the slit and into the opening. The central portion of holder has a substantially flat, planar anterior surface. The marginal edge portion is foldably joined to the central portion at a fold line (7), defining a first foldable wing through which the opening is formed. The holder having opposite marginal edge portion (located on the other side of element number 4) is bendable to define a pair of opposed wings having aligned opening. The slits are shaped to resist removal of line from the opening.

Kurtz et al. teaches the opening but fails to teach plurality of side by side openings formed through the marginal edge. Wilder et al. teaches the plurality of side by side openings (H1 and H2). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added additional hole in Kurtz et al.'s marginal edge as taught by Wilder et al. to provide support for supporting additional line in the marginal edge.

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Claims 5-8 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtz et al. in view of Wilder et al. and in further view of US Patent # 5,573,111 to Gordon et al.

Kurtz et al. in view of Wilder et al. teaches the holder and openings but fails to teach the holder is made of paperboard and series of radially extending short cuts around the edges of openings. Gordon et al. teaches the holder is made of paperboard (10, col. 2, line 19) and series of radially extending short cuts (60) around the edges of openings (32) It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Kurtz et al. in view of Wilder et al.'s material to paperboard and series of radially extending short cuts around the edges of openings as taught by Gordon et al. to reduce weight in holder to provide convenience for moving holder from one place to another and provide additional resistance for the line to maintain in the openings.

Response to Arguments

Applicant's arguments filed 11/4/04 have been fully considered but they are not persuasive.

With respect to applicant's argument stating that Kurtz's invention is not the function as an IV line holder that holds a plurality of IV lines in separated and organized relationship and that Kurtz is a dressing material that is designed to be placed on a tube so that the tube holds the dressing in place, rather than something that holds a plurality of lines in separated and organized relationship. The examiner disagrees with the applicant because Kurtz's invention (dressing) is designed to support the tube in one place when inserting in the hole of body. Without the dressing, the tube has the ability to move in and out of the hole of body. The dressing has slit (6) that is connect the opening (5) so that the tube would be lock when inserting through the opening

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and that would prevent the tube from moving in and out of the hole of body. Kurtz's invention has the similar function as the IV line holder for holding the IV line.

The applicant argues that Kurtz does not teach a holder having a central portion and opposite bendable wings and that the two panel portions on opposite side of the fold line 7 appear to be folded in contiguous, parallel relationship with one another. The examiner disagrees with the applicant because Kurtz clearly shows that the holder has the central portion (7) that allows the panels, which are wings bendable at the central portion. If there was no central portion, the wings would not be able to bend.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kurtz and Wilder both teach the flat material having opening for supporting tube. And that it is obvious to have modified Kurtz's opening with multiple openings as taught by Wilder to provide support for additional line/tube.

In response to applicant's argument that Gordon is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be

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reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kurtz and Gordon both teach flat piece of material having openings with slits that allow an object to be inserted and retained therein.

Allowable Subject Matter

Claims 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regard to claims 10-11, the prior art fails to teach the slits include angularly offset portions. In regards to claim 12, the prior art fails to teach the outer end edges of the holder are notched where the slit extends through the outer end edge.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (703) 306-5994. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703 308 2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III
Examiner
Art Unit 3632

AJW

1/12/05


ANITA KING
PRIMARY EXAMINER